

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELUID JOSEPH MENDOZA,

Plaintiff,

v.

DOUBLEROAD TRUCK & BUS TYRES,
et al,

Defendants.

Case No. 1:22-cv-01390-JLT-SKO

FIRST SCREENING ORDER

ORDER FOR PLAINTIFF TO:

(1) FILE A FIRST AMENDED COMPLAINT;

(2) NOTIFY THE COURT THAT HE
WISHES TO STAND ON HIS
COMPLAINT; OR

(3) FILE A NOTICE OF VOLUNTARY
DISMISSAL

(Doc. 1)

THIRTY-DAY DEADLINE

Plaintiff Eluid Joseph Mendoza is proceeding pro se and *in forma pauperis* in this action. Plaintiff filed his complaint on October 28, 2022. (Doc. 1 (“Compl.”).) Upon review, the Court concludes that the complaint fails to state any cognizable claims.

Plaintiff has the following options as to how to proceed. He may file an amended complaint, which the Court will screen in due course. Alternatively, Plaintiff may file a statement with the Court stating that he wants to stand on this complaint and have it reviewed by the presiding district

1 judge, in which case the Court will issue findings and recommendations to the district judge
 2 consistent with this order. Lastly, he may file a notice of voluntary dismissal. If Plaintiff does not
 3 file anything, the Court will recommend that the case be dismissed.

4 I. SCREENING REQUIREMENT

5 In cases where the plaintiff is proceeding *in forma pauperis*, the Court is required to screen
 6 each case and shall dismiss the case at any time if the Court determines that the allegation of poverty
 7 is untrue, or that the action or appeal is frivolous or malicious, fails to state a claim upon which
 8 relief may be granted, or seeks monetary relief against a defendant who is immune from such relief.
 9 28 U.S.C. § 1915(e)(2); *see also Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (district
 10 court has discretion to dismiss *in forma pauperis* complaint); *Barren v. Harrington*, 152 F.3d 1193
 11 (9th Cir. 1998) (affirming *sua sponte* dismissal for failure to state a claim). If the Court determines
 12 that a complaint fails to state a claim, leave to amend may be granted to the extent that the
 13 deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130
 14 (9th Cir. 2000) (*en banc*).

15 In determining whether a complaint fails to state a claim, the Court uses the same pleading
 16 standard used under Federal Rule of Civil Procedure 8(a). A complaint must contain “a short and
 17 plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P.
 18 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of
 19 a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556
 20 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A
 21 complaint may be dismissed as a matter of law for failure to state a claim based on (1) the lack of
 22 a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. *See Balistreri*
 23 *v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). The plaintiff must allege a minimum
 24 factual and legal basis for each claim that is sufficient to give each defendant fair notice of what
 25 the plaintiff’s claims are and the grounds upon which they rest. *See, e.g., Brazil v. U.S. Dep’t of*
 26 *Navy*, 66 F.3d 193, 199 (9th Cir. 1995); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

27 In reviewing the pro se complaint, the Court is to liberally construe the pleadings and accept
 28 as true all factual allegations contained in the complaint. *Erickson v. Pardus*, 551 U.S. 89, 94

(2007). The Court, however, need not accept a plaintiff’s legal conclusions as true. *Iqbal*, 556 U.S. at 678. “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of “entitlement to relief.”’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

II. SUMMARY OF PLAINTIFF’S COMPLAINT

Plaintiff’s complaint lists seven defendants, all of whom he describes as citizens or entities of China doing business as an export company: (1) May Xu; (2) Owen Jin; (3) Jian Huang; (4) Q&J Industries, Inc.; (5) Doubleroad Truck & Bus Tyres; (6) East Up; and (7) Q&J Industrial Group Co., Ltd. (Compl. at 1–4.) Plaintiff also lists Does 1-10 as defendants—real people whose true names are unknown to Plaintiff, but whom he alleges “post electronic messages with false contents on Facebook social media” and who “have gone to extra measures to shield their identities.” (Compl. ¶ 7.) Plaintiff states that jurisdiction is based on federal question and diversity of citizenship. (Compl. ¶ 8.)

Plaintiff brings this action on behalf of himself, doing business as Truck Tire Warehouse, LLC, alleging five causes of action: (1) breach of fiduciary duty; (2) breach of contract; (3) breach of insurance contract; (4) negligence; and (5) “common counts.” (*See* Compl. at 1–2.) Plaintiff alleges that on or about October 4, 2017, he entered into an agreement with Defendants to purchase about 262 commercial tires (“a container”), for which he prepaid \$36,040. (Compl. ¶¶ 12–13.) Plaintiff further alleges he purchased a cargo transportation insurance policy for the delivery of the tires to his place of residence in Pixley, California. (Compl. ¶ 14.) According to Plaintiff, pursuant to the contract and shipping delivery agreement, maximum responsibility, shipping costs, and the obligation to arrange tax payments were placed on the seller. (Compl. ¶ 15.)

Plaintiff alleges the container was never delivered to him in Pixley. (Compl. ¶ 16.) Instead, on or around November 10, 2017, the container was seized by the United States Customs and Border Patrol because Defendants did not properly submit requisite documents related to the delivery. (Compl. ¶ 17.) Plaintiff alleges that on or around December 20, 2017, Defendant Xu asked Plaintiff to obtain an attorney to draft a petition contesting seizure of the container, which Plaintiff agreed to do himself. (Compl. ¶ 18.) Plaintiff alleges the agreement was that he would be

1 reimbursed for all out-of-pocket costs totaling around \$22,311.19. (Compl. ¶¶ 18–19.) Plaintiff
 2 alleges Defendant Xu stated that because the container had been delivered to the United States, its
 3 seizure was now his “problem,” and he did not hear back from Defendant Xu until Customs
 4 granted his petition and an agent from Defendant DoubleRoad offered assistance to him. (Compl.
 5 ¶ 19.) Plaintiff alleges he received a text message from Defendant Xu stating he would be
 6 reimbursed for all costs, so he submitted an itemized receipt. (Compl. ¶¶ 19–20.)

7 Plaintiff alleges he did not hear back from Defendants for over two years until he began
 8 posting about his story on a LinkedIn discussion board; Defendant Jin, the president of
 9 DoubleRoad, contacted Plaintiff, asked him to remove the story, and indicated a willingness to
 10 discuss payment. (Compl. ¶ 20.) However, once the story was removed off of LinkedIn,
 11 Defendants failed to pay Plaintiff. (*Id.*) When the tires were released from Customs in April of
 12 2019, and Plaintiff finally received them, the container was missing 40 tires and they were
 13 weathered down to the point where they could not be sold as new. (Compl. ¶ 21.) Accordingly,
 14 Plaintiff seeks the following relief: \$27,311.62 as costs incurred by him pursuant to “Any
 15 Agreement;” that Defendants reissue 266 tires to him or the “current value of \$62,000.00” for the
 16 seized container; or that Defendants pay him \$89,311.62. (Compl. at 13.) The prayer for relief
 17 also seeks an award for treble damages or any such relief as may be deemed just and proper. (*Id.*)

18 III. DISCUSSION

19 For the reasons discussed below, the Court finds that the complaint does not state any
 20 cognizable claims. Plaintiff shall be provided with applicable legal standards and will be granted
 21 an opportunity to file an amended complaint to correct the identified deficiencies.

22 A. Plaintiff Has Not Pleaded Any Cognizable Federal Claims

23 1. Legal Standard

24 Jurisdiction is a threshold inquiry that must precede the adjudication of any case before the
 25 district court. *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376,
 26 1380 (9th Cir. 1988). Federal courts are courts of limited jurisdiction and may adjudicate only
 27 those cases authorized by federal law. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377
 28

1 (1994); *Willy v. Coastal Corp.*, 503 U.S. 131, 136–37 (1992). “Federal courts are presumed to lack
2 jurisdiction, ‘unless the contrary appears affirmatively from the record.’” *Casey v. Lewis*, 4 F.3d
3 1516, 1519 (9th Cir. 1993) (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546
4 (1986)).

5 Lack of subject matter jurisdiction may be raised by the court at any time during the
6 proceedings. *Attorneys Trust v. Videotape Computer Prods., Inc.*, 93 F.3d 593, 594–95 (9th Cir.
7 1996). A federal court “ha[s] an independent obligation to address sua sponte whether [it] has
8 subject-matter jurisdiction.” *Dittman v. California*, 191 F.3d 1020, 1025 (9th Cir. 1999). It is the
9 obligation of the district court “to be alert to jurisdictional requirements.” *Grupo Dataflux v. Atlas*
10 *Global Group, L.P.*, 541 U.S. 567, 593 (2004). Without jurisdiction, the district court cannot decide
11 the merits of a case or order any relief. *See Morongo*, 858 F.2d at 1380.

12 The basic federal jurisdiction statutes are 28 U.S.C. §§ 1331 and 1332, which confer
13 “federal question” and “diversity” jurisdiction, respectively. Federal jurisdiction may also be
14 conferred by federal statutes regulating specific subject matter. “[T]he existence of federal
15 jurisdiction depends solely on the plaintiff’s claims for relief and not on anticipated defenses to
16 those claims.” *ARCO Env’tl. Remediation, LLC v. Dep’t of Health & Env’tl. Quality*, 213 F.3d 1108,
17 1113 (9th Cir. 2000).

18 Pursuant to 28 U.S.C. § 1331, federal district courts have federal question jurisdiction over
19 “all civil actions arising under the Constitution, laws, or treaties of the United States.” “A case
20 ‘arises under’ federal law either where federal law creates the cause of action or ‘where the
21 vindication of a right under state law necessarily turn[s] on some construction of federal law.’”
22 *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088–89 (9th Cir. 2002) (quoting
23 *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 8–9 (1983)). The presence
24 or absence of federal question jurisdiction is governed by the “‘well-pleaded complaint rule.’”
25 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under this rule, “federal jurisdiction exists
26 only when a federal question is presented on the face of the plaintiff’s properly
27 pleaded complaint.” *Id.*

28 Pursuant to 28 U.S.C. § 1332, district courts have diversity jurisdiction only over “all civil

actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs,” and the action is between: (1) “citizens of different States;” (2) “citizens of a State and citizens or subjects of a foreign state;” (3) “citizens of different States and in which citizens or subjects of a foreign state are additional parties;” and (4) “a foreign state . . . as plaintiff and citizens of a State or of different States.” “To demonstrate citizenship for diversity purposes a party must (a) be a citizen of the United States, and (b) be domiciled in a state of the United States.” *Lew v. Moss*, 797 F.2d 747, 749 (9th Cir. 1986). “Diversity jurisdiction requires complete diversity between the parties—each defendant must be a citizen of a different state from each plaintiff.” *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1234 (9th Cir. 2008).

2. Analysis

Plaintiff alleges that jurisdiction in this case is proper because the case involves “federal questions” under 28 U.S.C. § 1331 and “diversity of citizenship of the parties” under 28 U.S.C. § 1332, in which the citizen of one state sues a citizen of another state or nation and the amount in controversy exceeds \$75,000. (Compl. ¶ 8; *see id.* (“The issue presented is one of diversity of citizenship federal law and/or regulation.”).)

As to federal question jurisdiction, Plaintiff’s mere invocation of the relevant statute is not sufficient to create subject matter jurisdiction. Section 1331 is a purely jurisdictional statute that does not, on its own, create a private right of action. *See Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 249 (1951) (“The Judicial Code, in vesting jurisdiction in the District Courts, does not create causes of action, but only confers jurisdiction to adjudicate those arising from other sources which satisfy its limiting provisions.”); *see also White v. Paulsen*, 997 F. Supp. 1380, 1382–83 (E.D. Wash. 1998) (citing *In re Estate of Ferdinand Marcos, Human Rights Litig.*, 25 F.3d 1467, 1474–75 (9th Cir. 1994)). At best, the complaint alleges state law claims such as breach of fiduciary duty, breach of contract, and/or negligence. Such allegations do not give rise to any federal claims. If Plaintiff elects to amend his complaint, he must allege facts establishing a cause of action “arising under” federal law to proceed in federal court.

As to diversity jurisdiction, Plaintiff alleges that he, a citizen of California, entered into a contract for the delivery of tires with Defendants, citizens or entities of China, and that Defendants

1 later breached the contract, breached their fiduciary duties, and acted negligently, causing Plaintiff
2 harm. (*See* Compl. at 1–4.) Liberally construed, these allegations establish diversity of citizenship.
3 *See Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir.
4 2006) (“in contract cases, we typically inquire whether a defendant ‘purposefully avails itself of
5 the privilege of conducting activities’ or ‘consumate[s] [a] transaction’ in the forum, focusing on
6 activities such as delivering goods or executing a contract.”).

7 Plaintiff, however, alleges several amounts in controversy, one of which exceeds \$75,000.
8 (Compl. at 13.) These amounts do not appear to be wholly substantiated. For example, Plaintiff
9 alleges he is owed \$62,000 by way of damages for the tires, which does not reflect the original
10 price of \$36,040 that he paid for the tires, but rather, their “current price.” (Compl. ¶ 45.) He
11 provides no evidence corroborating this amount. Similarly, in various areas of the complaint,
12 Plaintiff lists different out-of-pocket costs associated with the seizure of the container by Customs.
13 (*See, e.g.*, Compl. ¶ 18 (total costs of \$22,613); *id.* (total costs of \$22,311.19); Compl. ¶ 19 (total
14 reimbursement amount of \$22,613.19); Compl. ¶ 43 (total costs of \$22,311.62); Compl. at 13 (costs
15 incurred by Plaintiff amounting to \$27,311.62). Plaintiff cites Exhibits E and F in the complaint as
16 the text of reimbursement from Defendant Xu and receipt of the costs, respectively, which do not
17 indicate costs upward of \$22,000 related to the seizure of the goods. To the contrary, Exhibit F
18 contains several references to charges totaling \$3,885. (*See, e.g.*, Compl. at 51 (“Joe can pay for
19 [charges of \$3,885.29] and we will return him after container released.”); Compl. at 52 (“You will
20 need to pay the charges of \$3,885.29 shown on the enclosed lien notice. This appears to be the
21 seizure charges for trucking and storage for California Cartage Company.”).) Exhibit H contains
22 an itemization of costs presumably associated with the seizure, but those total costs also do not
23 amount to \$22,000. (*See* Compl. at 56.)

24 Thus, it is unclear how Plaintiff arrived at the alleged amount in controversy. Should
25 Plaintiff elect to file an amended complaint, he must substantiate his alleged \$89,311.62 amount in
26 controversy and request for treble damages by submitting declarations and other evidence
27 specifying the nature and amount of his damages.
28

B. Rule 8

As set forth above, Rule 8 of the Federal Rules of Civil Procedure states that a complaint must contain “a short and plain statement” showing entitlement to relief. Fed. R. Civ. P. 8(a)(2). “A ‘[s]hotgun pleading occurs when one party pleads that multiple parties did an act, without identifying which party did what specifically; or when one party pleads multiple claims, and does not identify which specific facts are allocated to which claim.’” *Courtney v. Hous. Auth. of the Cty. of Kings*, No. 1:20-cv-01296-NONE-SKO, 2021 WL 168285, at *4 (E.D. Cal. Jan. 19, 2021). “This violates Rule 10 of the Federal Rules of Civil Procedure, which requires that ‘[a] party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances,’ and Rule 8.” *Id.* Although the Federal Rules use a flexible pleading policy, Plaintiff is required to give fair notice to Defendants as to the bases of the claims and must allege facts that support the elements of the claims plainly and succinctly. A complaint must contain sufficient factual allegations to give Defendants fair notice of each claim and the grounds upon which it rests. *Twombly*, 550 U.S. at 555.

Here, Plaintiff sets forth his factual allegations and causes of action in numbered paragraphs such that he may be able to allege cognizable claims against certain defendants. The major deficiency, however, with the complaint as currently pleaded is that it is an impermissible “shotgun” pleading. Plaintiff’s complaint alleges various claims but does not state which facts relate to which claim or Defendants, or how the facts relate to the legal claims raised, and the factual allegations are largely repetitive of one another. This is not permissible because it does not give Defendants “fair notice” of the claims against which they must defend and the facts and legal theories that give rise to the claims. In any amended complaint, **Plaintiff must clearly state which claim is against which Defendant, the legal basis for the claim, and the facts that support and show that the specific defendant committed the violation asserted as the legal basis for the claim.** *See Fed. R. Civ. P. 8(a)*. The failure to do so shall result in dismissal of this action.

C. Leave to Amend

The Court has screened Plaintiff’s complaint and finds that it fails to state any cognizable

1 claims. Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, “[t]he court should freely
2 give leave [to amend] when justice so requires.” Accordingly, the Court will provide Plaintiff with
3 time to file an amended complaint so he can provide additional factual allegations. *Lopez*, 203 F.3d
4 at 1130.

5 Plaintiff is granted leave to file an amended complaint within thirty days. He is cautioned
6 that an amended complaint supersedes all prior complaints filed in an action, *Lacey v. Maricopa*
7 *Cty.*, 693 F.3d 896, 907 n.1 (9th Cir. 2012), and must be “complete in itself without reference to
8 the prior or superseded pleading,” Local Rule 220. Therefore, in an amended complaint, as in an
9 original complaint, each claim and the involvement of each Defendant must be sufficiently alleged.
10 The amended complaint should be clearly and boldly titled “First Amended Complaint,” refer to
11 the appropriate case number, and be an original signed under penalty of perjury. Although Plaintiff
12 has been given the opportunity to amend, it is not for the purpose of changing the nature of this suit
13 or adding unrelated claims. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”
14 complaints).

15 Plaintiff has a choice on how to proceed. Plaintiff may file an amended complaint if he can
16 substantiate the amount in controversy for purposes of subject matter jurisdiction and he believes
17 that additional true factual allegations would state cognizable claims as to each Defendant named
18 in the complaint. If Plaintiff files an amended complaint, the Court will screen that complaint in
19 due course. Alternatively, Plaintiff may choose to stand on his complaint subject to the Court
20 issuing findings and recommendations to a district judge consistent with this order. Lastly, Plaintiff
21 may file a notice of voluntary dismissal.

22 IV. ORDER

23 Based on the foregoing, IT IS ORDERED that:

- 24 1. Within thirty (30) days from the date of service of this order, Plaintiff shall either:
 - 25 a. File a First Amended Complaint;
 - 26 b. Notify the Court in writing that he wants to stand on this complaint; or
 - 27 c. File a notice of voluntary dismissal.
- 28 2. If Plaintiff chooses to file an amended complaint, Plaintiff shall caption the amended

complaint “First Amended Complaint” and refer to case number 1:22-cv-01390-JLT-SKO.

3. Failure to comply with this order may result in the dismissal of this action.

IT IS SO ORDERED.

Dated: **February 10, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE